671.

SUPREME COURT OF THE UNITED STATES.

No. 59.

JAMES HUGHES, PLAINTIFF IN ERROR,

VERSUS

TRUSTEES OF CLARKSVILLE.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE INDIANA DISTRICT.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	2
Transcript of "Bartholomew et al. vs. Hughes," in circuit court of the State	5	3
Declaration in ejectment	6	3
Petition of defendant for the removal of said cause into the district court U. S	7	4
Said petition sustained and cause removed	8	5
Agreed case submitted to the district court U. S	9	7
An act of the General Assembly of Virginia of 1783—an act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town, &c	10	7
An act of Virginia of 1790, amending the preceding act	12	8
Plat of the town of Clarksville	13	9
Proceedings of the Board of Commissioners	14	10
An act of the Territory of Indiana for the relief of Fetters, Hughes and Fuller	15	11
Proceedings of the Board of Trustees	16	12
Judgment	17	13
Clerk's certificate	17	13

UNITED STATES OF AMERICA, sct.

The President of the United States to the Judge of the district court of the United States of America, holden in and for the Indiana district, greeting:

That, because in the record and proceedings, and also in rendering the judgment in a suit before you, between Joseph Bartholomew, John Prather, W. W. Goodwin, Andrew Fite, John Weathers, William D. Beach,

Charles Fuller, Orlando Raymond, Isaac Howk, and Peter Bottorff, trustees of the town of Clarksville, were plaintiffs, and James Hughes was defendant, manifest error hath intervened to the great damage of the said James Hughes, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if a judgment thereof be given, then under your seal, you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States on the first Monday in February next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Judge Marshall, Chief Justice of the said Supreme Court, at Washington aforesaid, the fifth day of May, 1830, and of the independence of the United States the fifty-fourth.

Attest, H. HURST, *C. J. D.* [SEAL.]

To Joseph Bartholomew, John Prather, W. W. Goodwin, Andrew Fite, John Weathers, William D. Beach, Charles Fuller, Orlando Raymond, Isaac Howk, and Peter Bottorff, trustees of the town of Clarksville, and citizens of the State of Indiana. Whereas a writ of error hath issued by the clerk of the district court of the United States for the Indiana district, by James Hughes, a citizen of the State of Kentucky, returnable to the Supreme Court of the United States, at the city of Washington, the present seat of the National Government, on the second Monday in January next, to reverse a judgment entered up the said district court in an action of ejectment, in which James Hughes was defendant, and Joseph Bartholomew, John Prather, W. W. Goodwin, Andrew Fite, John Weathers, William D. Beach, Charles Fuller, Orlando Raymond, Isaac Howk, and Peter Bottorff, trustees of the town of Clarksville, were plaintiffs: these are therefore to cite you to appear at the said Supreme Court at Washington City, on the day aforesaid, then and there to hear the errors assigned for the reversal of the said judgment, and to be heard, if any thing you have to say, upon the said writ of error.

Witness my hand, as Judge of the said district court, this fifth day of May, one thousand eight hundred and thirty, and of the independence of the United States the fifty-fourth.

B. PARKE.

Pleas before the Honorable Benjamin Parke, Judge of the district court of the United States of America, for the Indiana district, at Indianopolis, the third day of May, in the year of our Lord one thousand eight hundred and thirty.

Be it remembered that, heretofore, to wit, at a district court holden at Indianopolis, on Monday the fifth day of November, in the year of our Lord one thousand eight hundred and twenty seven, came James Hughes, a citizen of the State of Kentucky, and filed the record and proceedings of a suit in ejectment, wherein the said James Hughes is defendant, and John

672.

Doe, ex dem. Joseph Bartholomew, John Prather, W. W. Goodwin, Andrew Fite, John Weathers, William D. Beach, Charles Fuller, Orlando Raymond, Isaac Howk, and Peter Bottorff, trustees of the town of Clarksville, are plaintiffs, commenced in the circuit court in and for the county of Clark, and state of Indiana, and removed into the said district court of the United States for the Indiana district by the said James Hughes, which said record and proceedings aforesaid, are in the words and figures following, to wit:

Pleas before the circuit court of Clark county, at the October term of said court, holden on Wednesday, the 10th day of October, 1827, at the court-house in Charlestown, before the honorable John F. Ross, President of the second judicial circuit, in said State of Indiana, and Benjamin Ferguson, Esquire, an associate Judge.

John Doe, ex dem. Joseph Bartholomew, John Prather, W. W. Goodwin, Andrew Fite, John Weathers, William C. Beach, Charles Fuller, Orlando Raomond, Isaac Howk, and Peter Bottorff, trustees of the town of Clarksville, plaintiffs, *versus* James Hughes, defendant, in the room Richard Roe—In ejectment for five hundred acres of land, situate and lying in Clarksville, within the county of Clark.

Be it remembered that, heretofore, to wit, on the 27th day of September, 1827, came the plaintiffs aforesaid, by Isaac Howk, Esquire, their attorney, and filed in the clerk's office for Clark county, the following declaration and notice, to wit:

State of Indiana, Clark county, sct. Clark circuit court.—John Doe complains of Richard Roe of a plea of trespass and ejectment of a farm, for that whereas Joseph Bartholomew, John Prather, Willis W. Goodwin, Andrew Fite, John Weathers, William D. Beach, Charles Fuller, Orlando Raymond, Isaac Howk, and Peter Bottorff, the trustees of the town of Clarksville, on the first day of July, in the year of our Lord one thousand eight hundred and twenty-seven, at the county of Clark aforesaid, had demised to the said John Doe five hundred acres of land, with the appurtenances, situate and being in Clarksville, within the county aforesiaid, to have and to hold the same to the said John Doe and his assigns, from the first day of July, in the year aforesaid, for and during and unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended: and whereas also the trustees of the town of Clarksville, on the first day of July, in the year aforesaid, at the county aforesaid, had demised to the said John Doe, other five hundred acres of land, with the appurtenances, situate and being in Clarksville, in the county aforesaid, to have and to hold the same unto the said John Doe and his assigns, from the first day of July, in the year aforesaid, for and during and unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John Doe entered into said several tenements, firstly and secondly above mentioned, with the appurtenances, and became and was possessed thereof, for the said several terms so to him thereof respectively granted as aforesaid, and the said John Doe being so thereof possessed, the said Richard Roe, afterwards, to wit, on the second day of July, in the year aforesaid, with force and arms, &c. &c. entered into the said tenements, with the appurtenances, firstly and secondly above mentioned, in which the said John Doe was so interested in manner and for the several terms aforesaid, which are not yet expired, and ejected the said

John Doe from his said several farms, and other wrongs to the said John Doe then and there did, against the peace of the State of Indiana; wherefore the said John Doe saith that he hath sustained damage to the value of fifty dollars, and therefore he brings his suit.

J. HOWK.

Messrs. John P. Tunstall and Aaron Moffitt.

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as a casual ejector only, and having no claim or title to the same, advise you to appear on the first day of our next term of the Clark circuit court, to be holden on the 2d Monday in October next at the court-house in Charlestown, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be rendered against me by default, and you will be turned out of possession. Dated this 26th day of September, 1827.

Yours, &c.

RICHARD ROE.

Upon which declaration and notice, the following return of the sheriff is endorsed, to wit: The within writ of ejectment executed, as within commanded, by reading and delivering a copy of the within to Tunstall and Moffitt, the tenants in possession, Sept. 26th, 1827.

THOMAS CARR, *Sheriff of C. C.*

And afterwards, to wit, at a circuit court, continued and held by adjournment, ~~and afterwards, to wit, at a circuit court, continued and held by ad~~journment at the court-house in Charlestown on Tuesday, the 9th day of October, 1827, came the parties aforesaid, by their counsel, and the court being satisfied that John P. Tunstall and Aaron Moffitt, tenants in possession, have been served with a copy of the plaintiffs' declaration and notice, as by law required, and the casual ejector, Richard Roe, failing to appear, although solemnly called made default, whereby the said John Doe remains therein undefended against the said Richard Roe. It is therefore considered by the court, that the said John Doe recover against the said Richard Roe his term yet to come, of and in the tenements aforesaid, with the appurtenances, and also his damages sustained by reason of the trespass and ejectment aforesaid; and hereupon the said John Doe, freely, here in court remits to the said Richard Roe, all such damages as might and ought to be adjudged to him the said John Doe, by reason of the trespass and ejectment aforesaid; therefore let the said Richard Roe be acquainted of the same. And, on motion of James Hughes, by Charles Dewey, Esquire, his attorney, and it appearing to the satisfaction of the court, that he, the said James Hughes, is the landlord of the tenements and appurtenances in the declaration above mentioned, a stay of execution upon the judgment aforesaid until the further order of the court herein. Whereupon, the said James Hughes is admitted defendant in this suit in the room of the said Richard Roe, and said James Hughes confesses the lease, entry, and ouster, in the said declaration supposed, and agrees to rely on the title only at trial. And thereupon the said defendant, by his counsel, comes and defends the force and injury when, &c. and says he is not guilty in manner and form as the said plaintiff have declared against him, and of this he puts himself upon the country;

673.

and the said plaintiff, by his attorney, doth the like. And thereupon, at the time of making his appearance, the said James Hughes presented to the court his petition for the removal of this cause into the district court of the United States next to be holden at Indianopolis, in the Indiana district, on the first Monday in November next, which petition reads as follows, to wit: John Doe, on the demise of the trustees of Clarksville, *vs.* James Hughes, ejectment. Your petitioner, James Hughes, defendant in the above cause, states to the honorable court, that the plaintiffs, in this cause are residents and citizens of the State of Indiana, and that he, James Hughes, is a resident and citizen of the State of Kentucky; that the matter in dispute in this case exceeds five hundred dollars in value, exclusive of all costs; wherefore the said James petitions this honorable court for a removal of this cause into the district court of the United States, having circuit court powers and jurisdiction, next to be holden at Indianopolis, in the Indiana district, on the first Monday in November next. October 9, 1827.

JAMES HUGHES.

And the court not being sufficiently advised of the premises, give the parties further day in the present term to hear their judgment thereon.

And afterwards, to wit, at the same circuit court, continued and held by adjournment at the court-house in Charlestown, on Wednesday, the 10th day of October, 1827, come the parties aforesaid, by their counsel, and the court being sufficiently advised of and concerning the motion made on yesterday for the removal of this cause into the district court of the United States next to be holden at Indianopolis, in the Indiana district, on the first Monday in November next, do sustain the same; and the defendant thereupon offered Charles Dewey as security in the penal sum of five hundred dollars, for his entering in said district court of the United States, at Indianopolis, on the first Monday in November next, copies of the declaration and proceedings herein, and also for his there appearing to answer this suit, which bond, executed by Charles Dewey, Esq. as surety, reads as follows, to wit:

Know all men by these presents, that I, Charles Dewey, am held and firmly bound unto the trustees of Clarksville in the sum of five hundred dollars, to the payment of which sum, well and truly to be made to the trustees of Clarksville, or their successors in office, I bind myself, my heirs, executors, administrators; in witness whereof, I have hereunto set my hand and seal, this 10th day of October, A. D. 1827. The condition of the foregoing obligation is such, that, whereas the said James Hughes did, on the second day of the October term of the circuit court of Clark county, in the State of Indiana, present his petition that a certain action of ejectment, wherein John Doe, on the demise of the trustees of Clarksville, aforesaid, is plaintiff, and the said James Hughes is defendant, praying the said court for the removal of said cause from the said circuit court to the district court of the United States for Indiana district, to be held at Indianopolis on the first Monday in November next; and whereas the first mentioned court did, on third day of then said term, grant said petition, and order the removal of the said cause accordingly: now if the said James Hughes shall enter in the said district court of the United States on the first day of its session, copies of the declaration and proceedings in said cause, and shall then and there appear, by himself or attorney, and answer in said suit, then this obligation shall be null and void, otherwise remain in full force and virtue.

CHARLES DEWEY, [SEAL.]

Signed, sealed, and delivered in presence of
JOHN CARR.

Which surety is accepted by the court, and the proceedings herein ordered to be certified.

STATE OF INDIANA, CLARK COUNTY, sct.

I, John Carr, clerk of the circuit court for the county of Clark, within the 2d judicial circuit in said State of Indiana, do hereby certify, that the foregoing transcript contains a full, true, and complete copy of the declaration and proceedings had in the foregoing cause, as the same remains of record in my office. In testimony whereof, I have hereunto set my name and affixed the seal of our said court, at Charlestown, this 26th day of October, 1827. Test,

JOHN CARR, *Clk.*

And a court holden at Indianopolis on Monday, the fifth day of November, 1827, and filed the record and proceedings aforesaid in the said cause, whereupon, on motion, and by consent, this cause is continued until tomorrow; at which time, to wit, at a court holden at Indianopolis on Tuesday, the sixth day of November, which was in the year of our Lord one thousand eight hundred and twenty-seven, came the parties, by their counsel, and, on motion, and by consent of parties, this cause is continued until tomorrow; at which time, to wit, at a district court holden at Indianopolis, on Wednesday, the 7th day of November, which was in the year one thousand eight hundred and twenty-seven, came the parties, by their counsel, and, on motion, and by consent, this cause is continued until next term. And afterwards, to wit, at a district court holden at Indianopolis, on Monday, the fifth day of May, which was in the year of our Lord one thousand eight hundred and twenty-eight, came the parties, by their counsel, and, on motion, and by consent of parties, this cause is continued till Thursday next; at which day, to wit, at a district court holden at Indianopolis on Thursday, the eighth day of May, which was in the year one thousand eight hundred and twenty-eight, came the parties, by their counsel, and, on motion and by consent, this cause is continued until next term. And afterwards, to wit, at a district court holden at Indianopolis on Monday, the third day of November, in the year one thousand eight hundred and twenty eight, came the parties by their counsel, and, on motion, and by consent, this cause is continued until tomorrow; at which day, to wit, at a court holden at the town of Indianopolis, Tuesday, the fourth day of November, which was in the year of our Lord on one thousand eight hundred and twenty-eight, came the parties, by their counsel, and, on motion, and by consent, this cause is continued until tomorrow; and afterwards, to wit, at a court holden at Indianopolis on Wednesday, the fifth day of November, which was in the year one thousand eight hundred and twenty-eight, came the parties, by their counsel, and, on motion, and by consent, this cause is continued until next term. At which term, to wit, at a court holden at Indianopolis on Tuesday, the fifth day of May, which was in the year of our Lord one thousand eight hundred and twenty-nine, came the parties, by their counsel, and, on motion, and by consent, this cause is continued until tomorrow. At which day, to wit, at a

674.

court holden at Indianopolis on Wednesday, the sixth day of May, which was in the year of our Lord one thousand eight hundred and twenty-nine, came the parties, by their counsel, and filed the following agreed case, which said agreement is in the words and figures following, to wit:

JOHN DOE, ex dem. JOS. BARTHOLOMEW, &c. Trustees of the town of Clarksville, *versus* JAMES HUGHES. } *In ejectment.*

Now, at this time, came the parties aforesaid, by their counsel, and by their consent and agreement, this cause is submitted to the court upon the following statement of facts, to wit: that the lessors of the said plaintiff derive their title to the lands in the declaration mentioned from the State of Virginia, by virtue of an act of the General Assembly of said State of Virginia, passed in the year 1783, and entitled "An act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant;" and also of another act of the General Assembly of the State of Virginia, passed in the year 1790, entitled "An act to amend an act entitled an act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant;" which said acts are in the words and figures following, to wit:

"An act for the locating and surveying the one hundred and fifty thousand acres of land granted by a resolution of Assembly, to Col. George Rogers Clark, and the officers and soldiers who assisted in the reduction of the British post in the Illinois. Be it enacted by the General Assembly, that William Fleming, John Edwards, John Campbell, Walker Daniel, gentlemen, and George Rogers Clark, John Montgomery, Abraham Chaplain, John Bailey, Robert Todd, and William Clark, officers in the Illinois regiment, shall be, and they are hereby, constituted a board of commissioners, and that they, or a major part of them, shall settle and determine the claims to land under the said resolution. That the respective claimants shall give in their claims to the said commissioners on or before the first day of April, one thousand seven hundred and eighty-four, and, if approved and allowed, shall pay down to the commissioners one dollar for every hundred acres of land, such claim to enable them to survey and apportion the said lands. The said commissioners shall appoint a principal surveyor, who shall have power to appoint his deputies, to be approved by the said commissioners, and to contract with him for his fees. That, from and after the first day of April, one thousand seven hundred and eighty-four, the said commissioners, or a major part of them, shall proceed, with the surveyor, to lay off the said hundred and fifty thousand acres of land on the northwest side of the Ohio river, the length of which shall not exceed double the breadth; and after laying out one thousand acres, at the most convenient place therein, for a town, shall proceed to lay out and survey the residue, and divide the same by fair and equal lots among the claimants; but no lot or survey shall exceed five hundred acres. That the said commissioners, in their apportionments of the said laid, shall govern themselves by the allowances made by law to the officers and soldiers in the continental army. That the said commissioners shall, as soon as may be, after the said one hundred and forty-nine thousand acres shall be surveyed, cause a plat thereof, certified on

oath, to be returned to the register's office, and thereupon a patent shall issue to the said commissioners, or the survivers of them, who shall hold the same in trust for the respective claimants: and they, or a major part of them, shall thereafter, upon application, execute good and sufficient deeds for conveying the several portions of land to the said officers and soldiers.

And be it further enacted, that a plat of the said one thousand acres of land, laid off for a town, shall be returned by the surveyor to the court of the county of Jefferson, to be by the clerk thereof recorded, and thereupon the same shall be, and is hereby, vested in William Fleming, John Edwards, Walker Daniel, John Campbell, George Rogers Clark, John Montgomery, Abraham Chaplain, John Bailey, Robert Todd, and William Clark, gentlemen, trustees, to be by them, or any five of them, laid off into lots of half an acre each, with convenient streets and public lots, which shall be, and the same is hereby, established a town by the name of Clarksville. That, after the said land shall be laid off into lots and streets, the said trustees, or any five of them, shall proceed to sell the same, or so many as they shall judge expedient, at public auction, for the best price that can be had, the time and place of sale being previously advertised two months, at the court-houses of the adjacent counties; the purchasers, respectively, to hold their said lots subject to the condition of building on each a dwelling house twenty feet by eighteen, at least, with a brick or stone chimney, to be finished within three years from the day of sale; and the said trustees or any five of them, are hereby empowered to convey the said lots to the purchasers thereof, in fee simple, subject to the condition aforesaid, and the money arising from such sale, shall be applied by the said trustees in such manner as they shall judge most beneficial for the inhabitants of said town. That the said trustees, or the major part of them, shall have power, from time to time, to settle and determine all disputes concerning the bounds of said lots, and to settle such rules and orders for the regular building thereon as to them shall seem best and most convenient; and in case of death, removal out of the county, or other legal disability of any of the said trustees, the remaining trustees shall supply such vacancies by electing others, from time to time, who shall be vested with the same powers as those particularly nominated in this act. The purchasers of the said lots, so soon as they shall have saved the same according to their respective deeds of conveyance, shall have and enjoy all the rights, privileges, and immunities, which the freeholders and inhabitants of other towns, in this State, not incorporated, hold and enjoy. If the purchaser of any lot shall fail to build thereon within the time before limited, the said trustees, or a major part of them, may thereupon enter into suchlot, and may either sell the same again, and apply the money towards repairing the streets, or in any other way for the benefit of the said town, or appropriate such lot to the public use of the inhabitants of the said town.

RICHMOND, *to wit:*

I do hereby certify that the foregoing is a true copy from the original in my custody. Given under my hand (there being no seal of office) this 16th day of January, 1818.

WM. MUNFORD,
Keeper of the Rolls.

General Assembly of the Commonwealth of Virginia, begun and held at the capital in the City of Richmond, on Monday the eighteenth of October, in the year of our Lord one thousand seven hundred and ninety.

675.

An act to amend an act, entitled "An act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant," passed the 10th of December, 1790. Be it enacted by the General Assembly, that so much of the act entitled "An act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant," as requires that one thousand acres of land for a town shall be laid off into half acre lots, and each to be improved by building, subject to the condition of building on each a dwelling house twenty feet by eighteen at least, with a brick chimney, to be finished within three years from the day of sale, is hereby repealed.

The trustees of the said town are hereby directed to convey to those who have already purchased a lot or lots in said town, titles in fee simple, although the said lots may not have been improved agreeably to the requisitions of the said recited act.

And be it further enacted, that the said trustees, or any five of them, are authorized and required to sell at public auction the residue of the said one thousand acres of land, for the best price that can be had for the same at twelve months credit, in lots not exceeding twenty acres, nor less than half an acre, taking from the purchasers bond, with approved security, for the payment thereof, and, when received, to be applied to the benefit of the said town; notice of the time and place of such sale being previously advertised two months successively in the Kentucky Gazette.

And be it further enacted, that the said trustees shall convey to the said purchasers titles in fee; and that the said lots shall not be liable to forfeiture on account of any failure in improving the same, but that the titles thereof shall be absolute and unconditional, any thing in the said recited act to the contrary notwithstanding.

RICHMOND, *to wit:*

I do certify that the foregoing is a true copy from the original in my custody. Given under my hand, (there being no seal of office,) this 13th day of January, 1818.

WM. MUNFORD,
Keeper of the Rolls.

That, in pursuance of the act first above recited, the boardof commissioners thereby constituted, appointed William Clark principal surveyor, and proceeded to lay off the one hundred and fifty thousand acres of land, and laid off for a town the said one thousand acres of land, a plat of which was, by the said surveyor, returned to the court of the county of Jefferson, to be by the clerk thereof recorded, which survey and return is in the words and figures following, to wit, and of which survey the annexed map is substantially a copy, upon which the land controversy is correctly represented between the letters X and Y, and between two dotted lines upon the margin of the river *

Surveyed 1000 acres of land on the northwest side of the Ohio river for the town of Clarksville, agreeable to an act of the Assembly, entitled "An act for the surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant." Beginning on the bank of the Ohio river, at a small white thorn, white oak and hickory, a

*For plat, see original.

little below the mouth of Silver creek; running thence north, crossing Silver creek twice, 170 poles, to a sweet gum, beech, and sugar tree; thence east, crossing said creek again, 326 poles, to three beeches; thence south 40° east 86 poles to a beech and sugar tree; thence 176 poles to a large sweet gum, sugar tree, and dogwood, on the bank of Mill creek; thence south, crossing said creek, 180 poles, to a sugar and two ash trees; thence east 158 poles to three beeches; thence south, crossing Pond creek, 280 poles, to the Ohio, at two white ashes and two hickory trees; thence down the Ohio river, with its meanders, to the beginning.

W. CLARK,
P. Surveyor.

That the said trustees, named in the above recited act, entered upon the said 1000 acres of land, and had the same laid off into streets and lots, and sold a part of the same; and, as vacancies occured by death, removal out of the county, or otherwise, the remaining trustees supplied such vacancies by electing others, from time to time: so that, on the first day of July, 1827, the said lessors of the said plaintiff, to wit, Joseph Bartholomew, John Prather, Willis W. Goodwin, Andrew Fite, John Weathers, William D. Beach, Charles Fuller, Orlando Raymond, Isaac Howk, and Peter Bottorff, were the trustees of Clarksville, by being duly elected, from time to time, under the provisions of the above recited act.

That, at a meeting of the board of trustees of the town of Clarksville, on the 18th of March, 1803, the following resolution was adopted by the board, and entered on the book of their proceedings, to wit: "The trustees, taking into consideration the great advantage that would result to the trustees of the town of Clarksville, and the public in general, by opening a canal round the falls of the Ohio, on the application of George Rogers Clark, it is resolved by the board, that the rights, privileges, and advantages of the ground between the front lots on the Ohio, and the Ohio from the upper line of the town of Clarksville, adjoining Isaac Bowman's lot No. 1, in the Illinois grant, to the mouth of Mill creek, be exclusively granted to William Clark, his heirs and assigns, to be appropriated the use of opening a canal through any part of said slip of land, on which to erect mills, wharfs, store houses, or any kind of water works that may be of public utility, or for the erection of gates, locks, &c., for the passage of boats, vessels, &c., reserving, however, between the south and eastwardly line of said front lots and the canal, the distance of thirty feet. For which privilege the said William Clark, his heirs and assigns, is to pay the trustees or their successors one per cent on the production of all water works that may be erected on said canal, and five per cent. on the toll of all kind of craft that may pass through the said canal. Provided, however, that the said William Clark, his heirs and assigns, do complete the said canal for the erection of water works, within seven years from this day.

That, at a meeting of the trustees of the town of Clarksville, on the 5th day of December, 1807, the following order and resolution was adopted by said trustees, and also entered on their book of proceedings, to wit: "A memorial from William Clark, praying that the trustees will prolong the time for his complying with the conditions of a grant made to him by a former board of trustees on the 18th day of March, 1803, of a slip of ground from the upper part of the town to the mouth of Mill run, was read. On motion, it was resolved, that a further time of three years be allowed for complying with the condition of said grant, on condition that the said Wil-

676.

liam Clark, his heirs, &c., shall relinquish, under the former grant, the distance of thirty feet, reserved for a street between the front lots and any canal that may be opened, making a space of sixty feet the whole distance between such canal and said front lots, and that the former grant shall not extend further than to the lower basin, and that the said William Clark, his heirs, &c., shall bind himself, his heirs, &c., to build and keep up good and sufficient bridges across said canal at the intersection of every cross street, and to erect within the period mentioned, to wit, by the 18th of March, 1813, a mill or mills, to be of public utility, or open a canal agreeably to the conditions of the former grant, and to reserve to the trustees the stone in the river not necessary for the uses of effecting and continuing the improvements therein contemplated.

That, on the 21st November, 1810, an act of the General Assembly of the Territory of Indiana was passed in the words and figures following, to wit: An act for the relief of Daniel Fetter, James Hughes, and Solomon Fuller.

Whereas it has been represented to the General Assembly of this Territory, by sundry petitions and other documents, that, by the act of the State of Virginia incorporating the town of Clarksville, in this Territory, the trustees thereof were authorized to dispose of the land upon which said town was laid off in half acre lots, at public auction or otherwise, as they might think proper, and whereas the said trustees, by their orders and resolutions, did dispose of a certain part of said town to General William Clark, in fee conditional, who transferred the same to the aforesaid Fetter, Hughes, and Fuller, and whereas it seems to have been the intention of the Legislature of Virginia to subject the lots and land, whereon the said town of Clarksville was laid off, to the control and disposition of the trustees of the said town, who, for the benefit of the proprietors therein, and for the interest of the public at large, did dispose en masse, in the manner aforesaid, of a number of lots, and it appearing by the memorial of the said Fetter, Hughes, and Fuller, that the intention is to erect, for the public utility and convenience, mills and other water works on the said ground—

Sec. 1. Therefore be it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same, that the said Daniel Fetter, James Hughes, and Salmon Fuller, their heirs and assigns, be, and they are hereby considered, and shall be taken, deemed and holden, as the legal and equitable proprietors of the lots and land contained in the orders and resolutions of the said board of trustees, and the deed of transfer thereof from the said William Clark, subject nevertheless to the terms and conditions upon which the same was granted by the said board of trustees to the said William Clark.

GEN. W. JOHNSON,
Speaker of the House of Representatives.
JAMES BEGGS,
President of the Legislative Council.

Approved, November 21, 1810.

WILLIAM H. HARRISON.

That the said William Clark, prior to the passage of the act last above recited, had transferred his interest in and to the said slips of land, mentioned in said resolutions of the said trustees of Clarksville, to the said Fetter, Hughes, and Fuller, and that some of the persons composing the board of trustees of Clarksville, at that time, individually signed the petition of said

Fetter, Hughes, and Fuller, to the said General Assembly, for the passage of the above recited act.

That the said Fetter, Hughes and Fuller, entered upon the said slip of land, under the aforesaid orders and resolutions of said trustees, and erected thereon, on the margin of the Ohio river, a saw mill, with a pair of mill stones for grinding, in the fall of the year, 1810, which mill was shortly after swept away by the floods. That, in the year 1812, they erected and put into operation a grist mill, of public utility, on the same slip of land, and on the margin of the Ohio river, which remains unto this day; that to furnish a head of water for said mill, they cut through a ridge of rock in the bed of said river, lying between a channel of said river next the shore and an outer channel, by which the water from the outer channel was brought into the channel next the shore, and that they expended in making said improvements from twelve to twenty thousand dollars.

That, at a meeting of the board of trustees of the town of Clarksville, on the 17th day of December, 1816, the following resolution was adopted, and entered on the book of said trustees, to wit: On motion of Willis W. Goodwin, resolved, that the clerk of this board be directed to call on Messrs. Fetter and Hughes, assignees of William Clark, and inform them that it is the request of this board that they do make out and exhibit, at our next meeting, an accurate statement of all the productions of the water works, mills, canals, &c., erected on the slip of ground granted them by the trustees of Clarksville, since their commencement to the present date, and that the same be supported by affidavit." That, at a meeting of the said board of trustees on the 18th day of August, 1817, the following entry and order was made by said trustees, on the book of their proceedings, to wit: "Messrs. Fetter and Hughes produced to this board a statement of the quantity of flour manufactured at their mills, on the slip of ground granted to them by the trustees of the town of Clarksville, from the commencement to the 1st day of January, 1817, shewing the net proceeds thereon, by which it appears they are indebted to the trustees the sum of sixty-nine dollars 10½ cents, and it was ordered that they pay the same to the clerk of this board."

That, shortly after the making of the order last above recited, the said Fetter and Hughes paid to the clerk of the said board of trustees the sum of sixty-nine dollars 10½ cents, in pursuance of said order. That said Fuller duly transferred his interest in said slip of land and appurtenances to said Fetter and Hughes, and said Fetter transferred his interest in the same to said Hughes, defendant herein, who, at the time of the commencement of this suit, was in possession of said slip of land and appurtenances; that the said slip of land is a part of the one thousand acres laid off for a town, as above stated, and delineated on the map aforesaid, and is the land in the plaintiff's declaration mentioned; and that the said trustees of the town of Clarksville, on the first day of September, 1826, duly notified the said defendant to quit the possession of said slip of land and appurtenances, on or before the eighteenth day of March then next, and that defendant refused, and still refuses to quit possession thereof. It is agreed, that the parties and the court shall not be precluded by this statement of facts from inferring the existence of such other facts as may reasonably and properly be deduced from those stated.

ISAAC HOWK, *P. Q.*
DEWEY and FARNHAM, *P. D.*

677.

And, on motion, and by consent of parties, this cause is continued until next term.

And afterwards, to wit, at a district court holden at Indianopolis on Wednesday, the fourth day of November, in the year one thousand eight hundred and twenty-nine, came the parties, by their counsel, and, on motion, and by consent of parties, this cause is continued until Friday next. And afterwards, to wit, at a court holden at Indianopolis on Friday, the sixth day of November, in the year one thousand eight hundred and twenty-nine, came the parties, by their counsel, and, on motion and by consent, this cause is continued until the next term of this court; at which time, to wit, at a court holden at Indianopolis on Monday, the third day of May, in the year one thonsand eight hundred and thirty, being the day and year first written, came the parties, by their counsel, and the court being fully advised of and concerning the case agreed in this cause, it is considered by the court that the plaintiff recover against the defendant their term yet unexpired in the premises in the plaintiffs' declaration mentioned, together with their costs and charges by them about their suit in that behalf expended, and that the said plaintiffs have then writ of possession.

THE UNITED STATES OF AMERICA, INDIANA DISTRICT, sc.

I, Henry Hurst, Clerk of the district court of the United States for the said district, do hereby certify, that the foregoing is a true transcript of the record and proceedings had, and judgment rendered, in the above cause, as the same stands of record in my office. In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Indianopolis, this 12th day of May, 1830, and of the independence of the United States the 54th.

H. HURST, *C. I. D.* [SEAL.]